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EXAMINER

MAHAFKEY, KELLY JO

ART UNIT PAPER NUMBER

1761

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/604,841

Applicant(s)

THAI ET AL.

Examiner

Kelly Mahafkey

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/17/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.  
Ascertaining the differences between the prior art and the claims at issue.  
Resolving the level of ordinary skill in the pertinent art.  
Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 2, 4-6, and 9 are rejected to under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5275830), and as evidence by Brennan (Food Dehydration: A Dictionary and Guide) and in view of LaBaw et al. (US 4784867).
4. Smith discloses of a snack/food bar with good flavor, good texture, a density of 0.25-0.60 gram per cubic centimeter, and composed of water-soluble dietary fiber, a binder component, and unsulfured evaporated fruits, such as apple pieces. Refer specifically to Column 1 lines 13-18 and 35-41 and Column 7 lines 32-36 and 44-48. As evidence by Brennan, a dried apple that has a moisture content of 10-25% is referred to as an evaporated apple (page 139).
5. The reference is silent to the hardness of the fruit or snack bar.

6. LaBaw et al. (LaBaw) discloses of a flexible and moist food bar with a preferred hardness level of 0.15-3.0 kilograms per centimeter squared (Abstract and Column 4 lines 55-60). LaBaw teaches that the food bar contains a binder, as well as dehydrated apple pieces (Abstract and Column 6 lines 31-34). LaBaw discloses that non-crystallizing sugars can be added to the binder mixture so that the final product is not undesired by the consumer, or brittle or hard (Column 3 lines 39-47).

7. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of producing a fruit bar as taught by Smith to have a hardness level of 0.15-3.0 kilograms per centimeter squared as taught by LaBaw. One would have been motivated to do so in order to take advantage of the benefits of a hardness level of 0.15-3.0 kilograms per centimeter squared, such as consumer desired effects, or a non-sticky, flexible, and elastic snack bar which is not brittle or hard; one could have easily achieved the hardness level of 0.15-3.0 kilograms per centimeter squared, and reaped the benefits of that hardness by varying the particular level of non-crystallized sugar in the binder (Abstract, Column 1 lines 38-56, Column 3 lines 39-60, and Column 4 line 66). Because both items deal with an edible snack bar with a binder and dehydrated apple pieces, one would have a reasonable expectation of success from the combination.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5275830), and as evidence by Brennan (Food Dehydration: A Dictionary and Guide) and in view of LaBaw et al. (US 4784867) as applied to Claims 1, 2, 4-6, and 9 above, and

further in view of Lund et al. (ed.) (Microbiological Safety and Quality of Food, Volumes 1-2).

9. The reference discloses the moisture content of the dehydrated apple pieces is 10-25%, however, it does not teach of sulfured dried apple pieces.

10. Lund et al. (Lund) teaches that the treatment of sulfur dioxide as destroying many microorganisms on the surface of the dried fruit (page 751).

11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of producing a fruit bar with dehydrated apple pieces as taught by Smith to have included the process of treating the dehydrated apple pieces with sulfur dioxide as taught by Lund. One would have been motivated to do so in order to take advantage of the benefits of sulfur dioxide treatment, such as, fewer microorganisms on the surface of the fruit, which reduces the microbial load or spoilage on the dried fruit. Because both items deal with the treatment of dehydrated apple pieces, one would have a reasonable expectation of success from the combination.

12. Claims 7 and 8 are rejected under U.S.C. 103(a) as being unpatentable over Smith (US 5275830), and as evidence by Brennan (Food Dehydration: A Dictionary and Guide) and in view of LaBaw et al. (US 4784867) as applied to Claims 1, 2, 4-6, and 9 above, and further in view of Prosise et al. (US 2002/0015760 A1).

13. The reference is silent to the fruit bar containing a source of protein, such as whey protein.

14. Prosise et al. (Prosise) discloses of a healthy snack bar with whey protein and fiber for the purpose of health benefits with reduced impact on the flavoring of the snack bar. Refer specifically to Abstract, Paragraphs 0007, 0012, 0043, 0049, 0053, 0054, 0057, 0087, and 0088.

15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of producing a fruit bar with fiber as taught by Smith to have included whey protein, as a source of protein, as taught by Prosise. One would have been motivated to do so in order to take advantage of the nutritional benefits of protein, and more specifically the benefits of whey protein, such as, the reduced impact that it has on the flavor in the snack bar. Refer specifically to Abstract, Paragraphs 0007, 0012, 0043, 0049, 0053, 0054, 0057, 0087, and 0088. Because both items deal with snack bars and their ingredients, one would have a reasonable expectation of success from the combination.

16. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5275830), and as evidence by Brennan (Food Dehydration: A Dictionary and Guide) and in view of LaBaw et al. (US 4784867) as applied to Claims 1, 2, 4-6, and 9 above, and further in view of Gibson et al. (ed) (Functional Foods).

17. The reference teaches the addition of dietary fiber to a fruit bar, however, is silent to the specific dietary fiber that should be utilized.

18. Gibson et al. (Gibson) disclose that inulin is a multi-functional ingredient in food products, which has several nutritional benefits, including, acting as a “fat replacer” and sweetening agent, inhibiting the growth of pathogens in the large intestine, decreasing

cholesterol, improving the glucose tolerance in diabetics, and lowering the risk of colorectal cancer (page 249).

19. It would have been obvious to one skilled in the art at the time the invention was made to have modified the process of producing a fruit bar with fiber as taught by Smith to include inulin, as the source of fiber, as taught by Gibson. One would have been motivated to do so in order to take advantage of the nutritional benefits of inulin, such as, it is a “fat replacer”, has a sweetening power, inhibits the growth of pathogens in the large intestine, decreases cholesterol, improves the glucose tolerance in diabetics, and lowers the risk of colorectal cancer (page 249). Because both items deal with fiber as a food product, one would have a reasonable expectation of success from the combination.

### *Conclusion*

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

21. US 4018901 discloses of the consumer-desired texture of a food bar as “spongy”.

22. US 5643623 discloses of a healthy food bar product and its uses.

23. US 2004/0126477 discloses of cereal bars and the method of manufacturing them.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kelly Mahafkey  
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Art Unit 1761



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